BATU KAWAN BHD

v.

PENTADBIR TANAH DAERAH SEBERANG PERAI SELATAN

FEDERAL COURT, KUALA LUMPUR
WAN ADNAN ISMAIL CJ (MALAYA)
AHMAD FAIRUZ FCJ
SITI NORMA YAAKOB FCJ
[CIVIL APPEAL NO: 02-19-2000(P)]
22 AUGUST 2001

LAND LAW: *Acquisition of land - Estate land acquired - Compensation - Whether fair market value - Applicability of s. 214A National Land Code*

CIVIL PROCEDURE: *Jurisdiction - Court of Appeal - Land acquisition matters - Whether Court of Appeal only conferred with jurisdiction to hear land acquisition matters from 1 March 1998 - Whether appeal lay directly Federal Court before 1 March 1998 - Land Acquisition Act 1960, s. 49(1)*

LAND LAW: *Transfer - Estate land - Approval of Estate Land Board - Whether a mandatory pre-requisite - Pre and post amendment to para. 1 First Schedule to Land Acquisition Act 1960 - National Land Code, s. 214A*

The appellant, dissatisfied with the award of RM8,167 per acre granted by the respondent as compensation of its 5260 acres of estate land compulsorily acquired by the respondent under the Land Acquisition Act 1960 ('the Act'), referred the matter to the High Court. The learned High Court judge increased the award to RM15,000 per acre. Still dissatisfied with the award granted as it had evaluated the lands at RM40,000 per acre, the appellant appealed to the Court of Appeal which dismissed it on 22 September 1997. Its appeal to this court was also dismissed on 11 August 1998. Two years later, the appellant discovered that the Court of Appeal did not have the jurisdiction to determine its appeal on 22 September 1997 as appeals in land acquisition matters from the High Court lay directly to the Federal Court. The Court of Appeal was only conferred with such jurisdiction from 1 March 1998 when s. 49(1) of the Act was amended. The appellant then applied for an extension of time to file this present appeal against the decision of the learned judge of the High Court and to proceed to rehear the matter on its merits. By virtue of a consent order dated 18 October 2000, this court allowed the application on the undisputed ground that all proceedings in the Court of Appeal and

subsequent proceedings relating thereto in this court were null and void. The following issues were raised by the appellant in this appeal: (1) that there was a specific agreement reached between the parties that the appellant's valuation of RM40,000 per acre would be taken into account once it was established that the appellant's lands had potential development value; (2) that the restriction imposed in s. 214A of the National Land Code ('the Code') was not applicable in assessing the market value of the estate land in light of *Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor* as opposed to *Bertam Consolidated Rubber Co. Ltd v. Collector of Land Revenue Province Wellesley* which decided otherwise; and (3) the fair market value of the lands.

The respondent raised a preliminary issue, *ie*, that the consent order of this court did not declare the Court of Appeal order dated 22 September 1997 and the Federal Court order dated 11 August 1998 null and void. If left uncorrected, the said orders would appear to be valid and subsisting.

Held:

Per Siti Norma Yaakob FCJ

[1] The Court of Appeal had no jurisdiction in land acquisition matters until 1 March 1998 when s. 49(1) of the Act was amended to confer such powers and that too in respect of references made after that date. In the present case, since the reference was made on 15 September 1992, the Court of Appeal clearly lacked the jurisdiction when it determined the matter on 22 September 1997. (pp 639 h-i & 640 a)

[2] Upon perusal of the consent order, there was no declaration that the order of the Court of Appeal dated 22 September 1997 and the subsequent order of the Federal Court dated 11 August 1998 were null and void. Since the consent order was obtained on the common ground that the Court of Appeal at the material time lacked the jurisdiction to hear this particular reference matter, the oral application by the appellant to amend the consent order was allowed accordingly. (p 640 d-g)

[3] Although the learned judge had ruled that the appellant's lands had potential development value, from the manner the proceedings had been recorded and conducted, the court found that there was no agreement between the parties concerned to accept the appellant's valuation of the lands once that potentiality was established. That was very much a live issue. (p 642 b)

[4] The decision in *Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor* had not changed the law regarding the application of s. 214A of the Code in transactions relating to the transfer of estate land before 1998.

Whilst the case of *Bertam Consolidated Rubber Co. Ltd v. Collector of Land Revenue Province Wellesley* stated in no uncertain terms that estate land was subject to the constraint in s. 214A, it did not deal with the circumstances when approval of the Estate Land Board was required. The former case went one step further and defined the circumstances when approval of the Estate Land Board became necessary. (p 643 c-e)

[4a] If the transfer of the estate land is made to one person or an entity then on the authority of *Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor*, approval of the Estate Land Board is not required as there is no risk of fragmentation. But where the transfer is intended to be made to two or more persons and fragmentation is evidently at risk, the approval of the Estate Land Board becomes a mandatory pre-requisite before such a transfer can be effected. As such, the decisions in both cases complement each other. It was therefore erroneous to say that *Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley* was premised on the fact that no estate land can be transferred without approval of the Estate Land Board. Following *Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor*, it can be transferred without approval provided such transfer is made to one person or to one entity. But when it comes to assessing the market value of such lands, it is still subject to the legal restraint of s. 214A as decided by *Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley*. (p 643 e-g)

[5] The fact that para. 1 of the First Schedule to the Act was amended by the addition of a new sub-para (2D) made no difference to the manner in which the appellant's lands had been valued as that amendment came into effect only on 1 March 1998 whereas the acquisition of the appellant's lands took place in 1990. By virtue of the amendment, estate lands transferred to one person or to one entity after 1 March 1998 will be assessed like any other lands whereas such lands fragmented by the transfer to two or more persons would fetch a lower market value because of the legal restraint imposed by s. 214A of the Code. However, as stated, the said amendment had no application to the facts of this appeal. (pp 643 h & 644 a-c)

[6] The mere fact that the learned judge had increased the award from RM8,167 to RM15,000 per acre was in itself an acknowledgement that the potential development value of the appellant's lands had been taken into account. The learned judge had considered all factors as to locality, size, accessibility, use of the lands at the material time and regard to

another award in the same locality as the appellant's lands. Therefore, there was no reason to disturb the findings of the learned judge in this matter. (p 644 g-h)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu tidak berpuas hati dengan award sejumlah RM8,167 se-ekar yang diberikan oleh responden sebagai pampasan terhadap 5260 ekar tanah estet kepunyaannya yang telah di perolehi wajib oleh responden di bawah Akta Pengambilan Tanah 1960 ('Akta tersebut'), merujuk perkara tersebut kepada Mahkamah Tinggi. Yang Arif Hakim di Mahkamah Tinggi telah menambahkan award kepada RM15,000 se-ekar. Masih tidak berpuas hati dengan award yang diberikan oleh sebab ia telah menilaikan tanah tersebut pada RM40,000 se-ekar, perayu merayu kepada Mahkamah Rayuan di mana rayuan tersebut ditolak pada 22 September 1997. Rayuan kepada mahkamah ini pun telah ditolak pada 11 Ogos 1998. Dua tahun selepas itu, perayu mendapati bahawa Mahkamah Rayuan tidak mempunyai bidang kuasa untuk memutuskan rayuannya pada 22 September 1997 oleh kerana rayuan dalam perkara pengambilan tanah dari Mahkamah Tinggi hanya tertakluk kepada Mahkamah Persekutuan. Mahkamah Rayuan hanya diberi kuasa tersebut dari 1 March 1998 sejak s. 49(1) Akta tersebut telah dipinda. Perayu demikian memohon untuk perlanjutan masa untuk memfailkan rayuan ini terhadap keputusan Yang Arif Hakim dan mendengar balik ke atas merit sendiri. Memandangkan perintah persetujuan bertarikh 18 Oktober 2000, mahkamah ini membenarkan permohonan tersebut berdasarkan alasan yang tidak dipertikaikan bahawa semua prosiding di Mahkamah Rayuan dan prosiding kali kemudian adalah dibatalkan dan tak sah. Isu-isu berikut ditimbulkan oleh perayu dalam rayuan ini: (1) bahawa ada persetujuan spesifik di antara pihak-pihak berkenaan bahawa penilaian perayu RM40,000 se-ekar akan diambilkira sebaik sahaja diputuskan bahawa tanah perayu mempunyai nilai potensi untuk dimajukan; (2) bahawa penyekatan yang dikenakan oleh s. 214A Kanun Tanah Negara ('Kanun tersebut') tidak boleh dipakai bila menaksirkan nilai pasaran tanah estet memandangkan *Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor* bertentangan dengan *Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley* yang memutuskan sebaliknya; dan (3) nilai pasaran yang wajar terhadap tanah tersebut.

Responden menimbulkan isu permulaan iaitu, bahawa perintah persetujuan mahkamah ini tidak mengisytiharkan perintah Mahkamah Rayuan bertarikh 22 September 1997 dan perintah Mahkamah Persekutuan bertarikh 11 Ogos 1998 dibatalkan dan tidak sah. Sekiranya tidak dibetulkan, perintah-perintah tersebut akan merupakan sah dan berkekalan.

Diputuskan:
Oleh Siti Norma Yaakob HMP

[1] Mahkamah Rayuan tidak mempunyai bidang kuasa dalam perkara-perkara pemerolehan tanah sehingga 1 Mac 1998 sejak mana s. 49(1) Akta tersebut telah dipinda supaya memberi kuasa tersebut dan itu pun mengenai rujukan yang telah dibuat selepas tarikh itu. Di dalam kes kini, memandangkan rujukan dibuat pada 15 September 1992, Mahkamah Rayuan dengan jelas tidak mempunyai bidang kuasa apabila keputusan dibuat pada 22 September 1997.

[2] Setelah meneliti Perintah Persetujuan, tiada terdapat deklarasi berkenaan bahawa perintah Mahkamah Rayuan bertarikh 22 September 1997 dan perintah seterusnya dari Mahkamah Persekutuan adalah batal dan tidak sah. Memandangkan perintah persetujuan telah diperolehi atas dasar bahawa Mahkamah Rayuan pada masa berkenaan tidak mempunyai bidang kuasa untuk mendengar rujukan ini, permohonan secara lisan daripada perayu untuk meminda perintah persetujuan telah dibenarkan.

[3] Walaupun Yang Arif Hakim telah memutuskan bahawa tanah perayu mempunyai potensi untuk dimajukan, dari prosiding yang telah dicatitkan dan dibicarakan, mahkamah telah mendapati bahawa tiada perjanjian di antara parti-parti berkenaan untuk menerima peneliaan perayu terhadap tanah setelah potensi dibuktikan. Ini merupakan satu isu hidup.

[4] Keputusan di dalam *Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor* tidak menukarkan undang berkenaan permohonan s. 214A Kanun tersebut dalam pengurusan berkenaan kepada pemindahan estet tanah sebelum 1998. Sementara itu dalam kes *Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley* menyatakan dalam terma yang tanpa ragu-ragu bahawa estet tanah tertakluk kepada sekatan di bawah s. 214A, ia tidak menyentuh dengan keadaan bila kelulusan daripada "Estate Land Board" diperlukan. Kes terdahulu telah melangkah ke depan dan menentukan keadaan bila keperluan dari "Estate Land Boad" diperlukan.

[4a] Sekiranya pemindahan tanah estet tersebut dibuat kepada seorang atau suatu entiti, maka ke atas otoriti *Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor*, kelulusan dari "Estate Land Board" tidak diperlukan kerana tidak ada risiko perpecahan. Akan tetapi di mana pemindahan adalah kepada dua atau lebih orang dan risiko perpecahan wujud, kelulusan daripada "Estate Land Board" adalah pra-syarat mandatori sebelum pemindahan boleh dilakukan. Justeru, keputusan di kedua-dua

kes melengkapi suatu sama lain. Maka ianya salah untuk menyatakan bahawa *Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley* berdasarkan fakta bahawa tidak ada estet yang boleh dipindah tanpa kelulusan daripada "Estate Land Board". Mengikut *Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor*, ianya boleh dipindah tanpa kelulusan jika pindahan tersebut dibuat kepada seorang atau suatu entiti. Akan tetapi apabila nilai pasaran tanah tersebut ditaksirkan, ianya masih tertakluk kepada penyekatan undang-undang s. 214A Kanun tersebut sepertimana diputuskan di *Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley*.

[5] Fakta bahawa Perenggan 1 dalam Jadual Pertama Akta tersebut yang telah dipinda dengan suatu sub-perenggan baru (2D) tidak mengubahkan cara mana tanah perayu dinilaikan oleh kerana pindaan tersebut hanya dikuatkuasakan pada 1 Mac 1998 manakala pemerolehan tanah perayu dibuat pada tahun 1990. Memandangkan pindaan tersebut, tanah estet yang dipindahkan kepada seorang atau suatu entiti selepas 1 Mac 1998 akan ditaksirkan seperti tanah lain manakala tanah yang dipindahkan kepada dua atau lebih orang akan mendapat suatu nilai pasaran yang lebih rendah oleh sebab penyekatan undang-undang yang dikenakan oleh s. 214A Kanun tersebut. Walaubagaimanapun, sepertimana yang dinyatakan, pindaan tersebut tidak terpakai kepada fakta-fakta di dalam rayuan ini.

[6] Fakta bahawa Yang Arif Hakim telah menambahkan award daripada RM8,167 ke RM15,000 se-ekar adalah suatu akuan bahawa nilai potensi untuk dimajukan telah diambilkira. Yang Arif Hakim telah mengambilkira semua fakta-fakta mengenai lokasi, saiz, pemudahan yang didatangi oleh penggunaan tanah tersebut pada masa yang material dan perbandingan kepada award lain di lokasi yang sama dengan tanah perayu. Justeru, tidak ada alasan untuk mengganggu pendapat Yang Arif Hakim dalam tindakan ini.

[Rayuan ditolak.]

Case(s) referred to:

Bertam Consolidated Rubber Co Ltd v. Collector of Land Revenue Province Wellesley [1984] 1 CLJ 69; [1984] 1 CLJ (Rep) 78 ***(foll)***

Kumpulan Sua Betong Sdn Bhd v. Ezan Sdn Bhd & Anor [1993] 3 CLJ 337 ***(foll)***

Legislation referred to:

Land Acquisition Act 1960, ss. 12, 49(1)

National Land Code, s. 214A

For the appellant - RR Sethu (R Rajasingam); M/s R Rajasingam & Co
For the respondent - Alizatul Khair Osman Khairuddin (Ahmad Kamar); State Legal Adviser, Penang

[Appeal from High Court, Pulau Pinang; No: 15-1-1993]

Reported by Usha Thiagarajah

JUDGMENT

Siti Norma Yaakob FCJ:

At the outset of this appeal a preliminary point was raised by Dato' Alizatul Khair bt Osman Khairuddin, State Legal Adviser, for the respondent, that the consent order of this court dated 18 October 2000, granting leave to the appellant to file this appeal out of time, does not reflect the true status and nature of the proceedings as it failed to include some other pertinent order as well. To understand and appreciate that point it is necessary that we trace the steps how this appeal, a land acquisition matter, came to be before this court.

The starting point is 11 October 1990, as on that date six pieces of agricultural land belonging to the appellant were gazetted for the purpose of compulsory acquisition under the Land Acquisition Act 1960, ("the Act").

On 16 April 1992, the respondent held an inquiry under s. 12 of the Act and on 7 September 1992, a sum of RM53,197,974 or RM8,167 per acre was awarded as compensation for the total area of 5260 acres acquired. The appellant objected to the award and the respondent referred the matter to the Penang High Court as Land Reference No. 15-1-1993.

Abdul Hamid Mohamad, J (as he then was) heard the reference for two days on 13 June 1994, and 4 August 1995, and on 9 October 1995, he, *inter alia*, increased the award to RM5,000 per acre with interest at 8% per annum calculated from 28 November 1992, the date Borang K was issued until the date of settlement.

The appellant's then solicitors, lodged an appeal to the Court of Appeal on 6 November 1995, and on 22 September 1997, the Court of Appeal dismissed the appeal with costs. Subsequently the appellant filed a motion in this court for leave to appeal and on 11 August 1998, the motion was also dismissed with costs.

Two years later, the appellant's present solicitors realised that appeals in land reference matters lie directly from the decisions of the High Court to the Federal Court. This is so as the Court of Appeal established on 23 June 1994, had no jurisdiction in land acquisition matters until 1 March 1998, when s. 49(1) of the Act was amended to confer such powers and that too in respect

of references made after that date. In this case since the reference was made on 15 September 1992, clearly the Court of Appeal lacked jurisdiction when it determined the matter on 22 September 1997.

It was based on that reasoning that the appellant's solicitors filed a notice of motion dated 7 September 2000, in this court for an extension of time to appeal against the High Court decision dated 9 October 1995, and to proceed to rehear the matter on its merits. On 18 October 2000, this court allowed the application on the undisputed ground that all proceedings in the Court of Appeal and subsequent proceedings relating thereto in this court were null and void. To that end the Court of Appeal order dated 22 September 1997, dismissing the appellant's appeal with costs as well as the order of this court dated 11 August 1998, dismissing the appellant's application for leave to appeal should, for completeness, have been declared to be null and void and expressed to be so in the consent order dated 18 October 2000. However a perusal of that latter order shows no such declaration. It was to correct this omission that Dato' Alizatul Khair raised the preliminary point for it is her contention that if left uncorrected the Court of Appeal order dated 22 September 1997, and the order of this court dated 11 August 1998, would appear to be valid and subsisting. For the reasons already stated, this could never be. We entirely agree with her.

It was to correct that omission that Dato' RR Sethu, counsel for the appellant made an oral application to amend the consent order dated 18 October 2000, to include another order declaring the Court of Appeal order dated 22 September 1997, and the order of this court dated 11 August 1998, null and void. Since the consent order dated 18 October 2000, was obtained on the common ground that the Court of Appeal lacked jurisdiction to hear this particular reference matter, we had dispensed with the requirement of an affidavit to support the application to amend and ordered that the consent order dated 18 October 2000, be amended to include another order nullifying the two orders dated 22 September 1997, and 11 August 1998. Dato' RR Sethu also gave an undertaking that he would extract the order as amended in due course.

Coming now to the merits of the appeal, three issues were raised by the appellant and they relate to

(1) the specific agreement reached between the parties on the first day of hearing on 13 June 1994,

(2) the applicability of s. 214A of the National Land Code and

(3) the fair market value of the lands.

This appeal is not unlike most other land acquisition matters in that the only bone of contention is on the question of quantum, or expressed in another way what constitutes the fair market value of the lands acquired. This is so as differing valuations were expressed in the valuation reports prepared by the respective valuer employed by the parties. The appellant's valuer placed a figure of RM40,000 per acre for the lands whilst the respondent's valuer arrived at a more conservative figure of RM8,000 per acre. The difference in the two valuations is largely due to the different approach adopted by the valuers with the respondent's valuer proceeding on the basis that the development potential for the lands was remote as the lands were zoned as agricultural land and used for animal husbandary. The appellant's valuer considered otherwise.

It is the appellant's contention that faced with the differing valuations, there was an agreement reached with the respondent that they put in written submissions on the single issue as to whether the lands had development potential. If the court decides so, the appellant's value be accepted, if not, the respondent's valuation will prevail.

Dato' Alizatul Khair strenously denied there was any such agreement but maintained that what was suggested by the parties and accepted by the High Court was that in view of the undisputed facts as to the acquisition of the lands, the parties submit written submissions based on the valuation reports relied upon by them. She stressed that matters pertaining to the development potentiality of the lands and with it the market value were very much in issue.

Since neither Dato' Sethu and Dato' Alizatul Khair argued the matter in the High Court, we have to rely largely on the judge's notes as to what had transpired on 13 June 1994.

A perusal of the proceedings recorded by the judge shows no such agreement as made out by Dato' Sethu. All that was recorded was the fact that at the suggestion of both counsels, the judge directed that the parties file and serve written submissions within a month of each other. However the judge's notes do not specify the subject matter of the written submissions but in his written judgment, he explained that to save the court's time, the parties had agreed not to call the two valuers to testify but instead their valuation reports would be relied and commented upon by way of written submissions.

What happened next was that upon receipt and consideration of the written submissions, the judge ruled on 4 August 1995, that the lands had development potential and adjourned the matter to 18 September 1995, to hear further arguments on the market value of the lands. If indeed there was agreement

to accept the appellant's valuation once development potential was established, it is unusually strange that the judge should direct that there be further arguments as to what would be the fair market value of the lands.

From the very manner the proceedings were recorded and the subsequent conduct of the proceedings after 4 August 1995, we are more than satisfied that there was no agreement between the parties to accept the appellant's valuation of the lands once the development potentiality was established. That was very much a live issue.

It is not disputed that the acquired lands form part of estate land. To drive home the fact that the compensation awarded was inadequate, the appellant argued that the restriction imposed by s. 214A of the National Land Code, is not applicable when assessing the value of estate land and that the observations expressed by Azmi FJ, in *Bertam Consolidated Rubber Co. Ltd v. Collector of Land Revenue Province Wellesley* [1984] 1 CLJ 69; [1984] 1 CLJ (Rep) 78 which was relied upon by the court below are no longer good law and ought not to be followed. This is so following the Supreme Court's decision in *Kumpulan Sua Betong Sdn. Bhd. v. Ezan Sdn. Bhd & Anor*. [1993] 3 CLJ 337, which decided that estate land can be sold and transferred to any one person or company without the approval of the Estate Land Board. The effect of this submission is that if the restriction of s. 214A is taken into account, this will reduce the market value of the land as was done in this case. If there is no such legal restraint, the market value of the land will be higher and on that basis estate land is to be valued as any other land.

The restriction imposed by s. 214A is expressed in the following terms.

> 214A. (1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever, to two or more persons unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as "the Board") established under subsection (3).

Bertam Consolidated which was also concerned with the compulsory acquisition of estate land and decided in 1984, outlines the purpose of s. 214A to be as follows.

> Section 214A has the effect of prohibiting any transfer, conveyance or disposal in any manner of estate land unless approval is obtained first from the Estate Land Board. The object of this section is to prevent fragmentation of estate land like Bertam Estate without due consideration being given to social and economic consequences to the country. Although the constraint could be removed by application to the Estate Land Board, at the material date the subject land was not free from that legal as opposed to administrative constraint. As such the learned Judge was not wrong in law in taking it into consideration.

Kumpulan Sua Betong on the other hand was concerned with the sale and purchase of estate land where the parties agreed that they would apply to the Estate Land Board for the approval of the sale. No such approval was obtained before the land was transferred and registered in the name of a third party nominated by the purchaser. The seller sued both the purchaser and the third party for a declaration that the transfer of the land was null and void. The Supreme Court held that there was nothing illegal about the omission to obtain the approval as no approval was necessary where the transfer was to one person as was done in that case.

We do not see how the decision in *Kumpulan Sua Betong* has changed the law regarding the application of s. 214A in transactions relating to the transfer of estate land before 1998. Regardless of whether the transactions originated between a willing seller and purchaser as was the case in *Kumpulan Sua Betong*, or an unwilling seller and purchaser as in *Bertam Consolidated*, s. 214A is one factor that will have to be considered when arriving at the market value of estate land. Whilst *Bertam Consolidated* states in no uncertain terms that estate land is subject to the constraint of s. 214A, it did not however deal with the circumstances when approval of the Estate Land Board was required. *Kumpulan Sua Betong* went one step further and did just that by defining the circumstances when approval of the Estate Land Board becomes necessary. If the transfer is made to one person or an entity then on the authority of *Kumpulan Sua Betong*, approval of the Estate Land Board is not required as there is no risk of fragmentation. But where the transfer is intended to be made to two or more persons and fragmentation is evidently at risk, the approval of the Estate Land Board becomes a mandatory prerequisite before such a transfer can be effected. As such the decisions in both cases complement each other. It is therefore erroneous to say that *Bertam Consolidated* was premised on the fact that no estate land can be transferred without approval. Following *Sua Betong*, it can be transferred without approval provided such transfer is made to one person or to one entity, but when it comes to assessing the market value of such lands, it is still subject to the legal restraint of s. 214A as decided by *Bertam Consolidated*.

The fact that the para. 1 of First Schedule of the Act has been amended by the addition of a new sub-paragraph (2D) makes no difference to the manner in which the appellant's lands have been valued as that amendment came into effect only on 1 March 1998, whereas the acquisition of the appellant's lands took place in 1990. Sub-paragraph (2D) for which no retrospective intention is expressed in that sub-paragraph or anywhere else in the Act reads as follows:

> (2D) In assessing the market value of any scheduled land which is an estate land, or forms part of an estate land within the meaning of section 214A of the National Land Code, the market value shall not in any way be effected by the fact that it can be sold to one person.

What the amendment seeks to do is to protect estate land against fragmentation by providing that after 1 March 1998, when assessing the market value of such estate land, the legal restraint of s. 214A will not be considered if such land is transferred to one person or one entity as there is no fragmentation. However where such estate has been fragmented by the transfer of such lands to two or more persons, the legal restraint of s. 214A is applicable when assessing the market value of such lands. For practical purposes estate lands transferred to one person or to one entity after 1 March 1998, will be assessed like any other lands whereas such lands if transferred to two or more persons would fetch a lower market value because of the legal restraint imposed by s. 214A.

As we have stated earlier the provisions of sub-paragraph (2D) of para. 1 of the First Schedule to the Act have no application to the facts of this appeal.

The respondent had valued the appellant's lands at RM8,167 per acre. Following his ruling that the land had development potential, Abdul Hamid, J raised the value to RM15,000 per acre. He did so by taking into consideration the following factors.

(1) The lands were not valued lot by lot as was done by the respondent. Instead they were valued as a whole.

(2) The land were only accessable by ferry.

(3) A bridge linking the mainland with the appellant's lands was only 20% complete then.

(4) The appellant's lands were used for pig rearing at the material time.

(5) A recent award given by Mokhtar Sidin, J in respect of lands acquired in the same area with conditions similar to that of the appellant's lands. RM15,000 per acre was awarded for lands which were so much lesser in area than that of the appellant's lands.

Despite such considerations, the appellant still maintained that the learned judge had erred when he refused to accept the appellant's valuation of RM40,000 per acre as the potential value of the lands. We see no merit to that argument as the mere fact of the increase in the award from RM8,167 per acre to RM15,000 per acre is in itself an acknowledgment that the lands' development potentiality has been taken into account. Reading the judgment, we note that the judge had considered all factors as to locality, size, accessibility, use of the lands at the material time and regard to another award in the same locality as the appellant's lands. We therefore see no reason to disturb the findings of the learned judge in this matter and to that end, we dismiss this appeal with costs and order that the deposit be paid out to the respondent to account of his taxed costs.